REMARKS

Applicant respectfully requests that the Examiner consider the above-captioned patent application in view of the foregoing amendments and the following comments.

Amendments to Specification

The specification has been amended to clarify the meaning of the text, in accordance with the Examiner's comment on the differences between "hematocrit," "hemoglobin," and "hematocrit soup." No new matter has been added.

Amendments to the Claims

Claim 1

Claim 1 has been amended to include the following language:

using the corrected absorption data to calculate analyte concentration in the sample; and

providing the analyte concentration to a user.

Support for Claim 1 as amended can be found, for example, in paragraphs **[0062]–[0063], [0144], [0240]** and **[0413]** in the specification. The limitations of Claim 1 are not disclosed or suggested by the prior art. For example, Kajiwara does not teach multiplying reference absorption data by a scaling factor. Moreover, Claim 1, as amended, is directed to statutory subject matter and has a tangible result.

Claim 14

Claim 14 has been amended to include the following language:

...

subtracting the substance contribution from the absorption data of the sample, thereby providing corrected absorption data of the analyte substantially free of a contribution from the substance, wherein the reference absorption data is corrected for wavelength-dependent nonlinearities**; and**

storing the corrected absorption data in a memory.

Support for Claim 14 as amended can be found, for example, in paragraphs **[0011]**, **[0064]**–**[0065]**, and **[0146]** in the specification. Moreover, Claim 14, as amended, is directed to statutory subject matter and has a tangible result.

Claim 27

Claim 27 has been amended to include the following language:

...

correcting the absorption data for a non-analyte contribution to the absorption data, wherein the non-analyte contribution is from the finite width of the filter; **and**

providing the corrected absorption data to a user.

Support for Claim 27 as amended can be found, for example, in paragraphs **[0064]**–**[0065]**, **[0146]** and **[0358]**-**[0359]** in the specification. Moreover, Claim 27, as amended, is directed to statutory subject matter and has a tangible result.

Claim 30

Claim 30 has been amended to include the following language:

...

correcting the absorption data for a non-analyte contribution to the absorption data, wherein the non-analyte contribution is from the shape of the cuvette; **and**

storing the corrected absorption data in a memory.

Support for Claim 30 as amended can be found, for example, in paragraphs **[0062]**–**[0063]**, **[0144]** and **[0358]**-**[0359]** in the specification. Moreover, Claim 30, as amended, is directed to statutory subject matter and has a tangible result.

Claim 33

Claim 33 has been amended to include the following language:

calculating a ratio of the third quantity divided by the sum of the first quantity, the second quantity, and the third quantity **to achieve a pathlength-independent quantity; and**

storing the ratio in a memory.

Support for Claim 33 as amended can be found, for example, in paragraph **[0266]** in the specification. The limitations of Claim 33 are not disclosed or suggested by the prior art. For example, Steuer does not teach calculating a ratio of a third quantity (as that quantity is set forth in the claim) divided by the sum of first, second, and third quantities (as those quantities are set forth in the claim) to achieve a pathlength-independent quantity. Moreover, Claim 33, as amended, is directed to statutory subject matter and has a tangible result.

Claim 36

Claim 36 has been amended to include the following language:

36. The method of Claim 33, wherein the second substance comprises hematocrit **soup**.

Support for Claim 36 as amended can be found, for example, in Figure 22. In particular, the Examiner's attention is directed to paragraphs **[0230]** and **[0243]-[0252]** in the specification. The term hematocrit soup can be understood with reference to Figure 22, which shows how "hematocrit soup" comprises the combination or mixture of the components of blood other than the plasma and glucose components. As further explained in paragraph **[0230]**: "The blood samples are primarily a mixture of three components: plasma, hematocrit soup and glucose as illustrated in Figure 22." Moreover, Claim 36, as amended, is directed to statutory subject matter and has a tangible result.

Claim 45

Claim 45 has been amended to include the following language:

...

determining the analyte concentration error by calculating the analyte concentration consistent with the difference between the residuals at the analyte reference wavelength and the measurement wavelength; **and**

storing the analyte concentration error in a memory.

Support for Claim 45 as amended can be found, for example, in paragraphs **[0062]**–**[0063]**, **[0144]** and **[0358]**-**[0359]** in the specification. Moreover, Claim 36, as amended, is directed to statutory subject matter and has a tangible result.

Claim 49

Claim 49 has been amended to include the following language:

A method of determining an optical pathlength of a sample comprising water and a whole blood protein, the method comprising:

measuring an optical absorption of the sample at an isosbestic wavelength

calculating the optical pathlength of the sample from the optical absorption**; and**

providing the optical pathlength to a user.

Support for Claim 49 as amended can be found, for example, in paragraphs **[0226]**–**[0227]** in the specification. The limitations of Claim 49 are not disclosed or suggested by the prior art. For example, Jöbsis teaches away from the claimed method by teaching absorption measurements where there is a difference between the resulting absorption values (Jöbsis Col. 4: lines 35-38). This teaches away from "measuring an optical absorption of the sample at an isosbestic wavelength," as recited in Claim 49. Indeed, as taught in the specification, an isosbestic wavelength is generally one at which two substances have equal absorptions (see, e.g. U.S. 2005/0036147, p. 21, paragraph **[0225]**). Moreover, claim 49, as amended, is directed to statutory subject matter and has a tangible result.

Conclusion

It is respectfully submitted that the rejections set forth in the outstanding Office Action are inapplicable to the present claims. Accordingly, issuance of a Notice of Allowance is requested.

Applicant respectfully traverses each of the Examiner's rejections and each of the Examiner's assertions regarding what the prior art shows or teaches. Although amendments and deletions have been made, no acquiescence or estoppel is or should be implied thereby. Rather, the amendments and deletions are made only to expedite prosecution of the present application, and without prejudice to presentation or assertion, in the future, of claims on the subject matter affected

thereby. Any arguments in support of patentability and based on a portion of a claim should not be taken as founding patentability solely on the portion in question; rather, it is the combination of features or acts recited in a claim which distinguishes it over the prior art.

The undersigned has made a good faith effort to respond to all of the rejections in the case and to place the claims in condition for immediate allowance. Nevertheless, if any undeveloped issues remain or if any issues require clarification, the Examiner is respectfully requested to call Applicant's attorney, William B. Bunker at (949) 721-2839 to resolve such issue(s) promptly.

Please charge any additional fees, including any fees for additional extension of time, or credit overpayment to Deposit Account No. 11-1410.

Respectfully submitted,

KNOBBE, MARTENS, OLSON & BEAR, LLP

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